



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>05/31/05</b>	Bill No:	<b>SB 234</b>
Subject:	<b>Taxpayer Confidentiality</b>	Author:	<b>Runner</b>
Related Bills:	<b>SB 280 (Campbell)</b>		

### BILL SUMMARY

This bill would prohibit an officer or employee of the Board of Equalization (BOE) or the Franchise Tax Board (FTB) from releasing certain personal information to the public.

#### Summary of Amendments

The amendments since the previous analysis deleted a provision that would have allowed for the disclosure by an officer or employee of the BOE the personal or financial information of a taxpayer to the general public if that information is directly related to matters at issue before the BOE.

### ANALYSIS

#### Current Law

Under existing Section 19542 of the Revenue and Taxation Code, in general, it is a misdemeanor for the FTB or any member thereof, or any deputy, agent, clerk, or other officer or employee of the state (including its political subdivisions), or any former officer or employee or other individual, who in the course of his or her employment or duty has or had access to returns, reports, or documents required to be filed under this part, to disclose or make known in any manner information as to the amount of income or any particulars (including the business affairs of a corporation) set forth or disclosed therein.

Existing Section 19545 allows the disclosure of a return or return information in a judicial or administrative proceeding pertaining to tax administration under the following conditions:

- The taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability to any tax imposed under the income tax laws;
- The treatment of an item reflected on the return is directly related to the resolution of an issue in the proceeding; or
- The return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

The BOE is the body that hears appeals of actions of the FTB. Once the FTB or the taxpayer provides information to the BOE for an appeal, the information becomes a public record and must be disclosed in response to a request made pursuant to the

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California Public Records Act (commencing with Government Code Section 6250). Moreover, any decision made by the BOE in an appeal of an action of the FTB is a public record. These decisions are made publicly available to provide guidance to taxpayers and practitioners.

### **Proposed Law**

This bill would amend Section 19545 of the Revenue and Taxation Code to specifically exclude from public disclosure personal information contained on returns or return information provided to the BOE unless that disclosure is specifically authorized or required by law. "Personal information" is defined as the social security number, telephone number, or personal residence address of an individual.

### **Background**

#### **Confidentiality Provisions**

Various statutes make tax and fee payer information reported to the BOE confidential. For example, Section 7056 of the Revenue and Taxation Code, with certain exceptions, makes records submitted to the Board in its administration of the Sales and Use Tax Law confidential. No similar confidentiality provision is applicable to records submitted to the Board for FTB appeals.

#### **Open Meeting Requirements**

The Bagley-Keene Open Meeting Act (commencing with Government Code Section 11120) requires that meetings of state bodies be conducted openly and that public writings pertaining to a matter subject to discussion or consideration at a public meeting be made available for public inspection. Disclosable public writings that are distributed to BOE Members prior to BOE meetings are made available upon request. Since the enactment of AB 1752 (Ch. 156, Stats. 2002, Migden), the BOE is also required to distribute public writings, except those involving a named tax or fee payer, that pertain to a topic under consideration at a public meeting to all persons who request copies, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the BOE taking final action on that item. As the bill was making its way through the legislature, those taxpayer protections were included in the bill when the BOE raised concerns about making available on the Internet the briefs prepared for FTB cases heard by the Members of the BOE, which are disclosable public records. These briefs may contain detailed personal and financial information about taxpayers submitted as evidence in support or opposition to the appeal. The amended AB 1752 excluded any information that involves a named tax or fee payer and therefore removed the requirement that this information be made available at the hearings, automatically distributed to requesting parties, or posted on the Internet.

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## COMMENTS

1. **Sponsor and purpose.** BOE Member Bill Leonard is sponsoring this bill to “provide greater protection of taxpayer information, while also allowing elected members of the Board of Equalization greater latitude to communicate to the public the non-personal issues involved in arriving at decisions.”
2. **The May 31, 2005 amendments** deleted proposed Section 19571 of the Revenue and Taxation Code which would have allowed for the disclosure by an officer or employee of the BOE the personal or financial information of a taxpayer to the general public if that information is directly related to matters at issue before the BOE. **The May 17, 2005 amendments** add legislative intent language to declare that the bill’s proposed limitations on the public’s right of access to meetings of public bodies or the writings of public officials and agencies are within the meaning of Section 3 of Article I of the California Constitution (enacted by voters by Proposition 59 of 2004). **The May 5, 2005 amendments** add the specifics of what is not disclosable except under specific requirements.
3. **The BOE currently complies with the restrictions imposed by this bill.** Under current practice, the BOE redacts a taxpayer’s social security number, telephone number, and personal address when disclosing FTB appeal documents to the public; therefore no compliance problems are anticipated.
4. **Suggested technical amendments.** Commencing at Section 6276 of the California Public Records Act, there is an alphabetical listing of statutes that identify records or information not required to be disclosed pursuant to subdivision (k) of Section 6254. The following language is recommended:  

To Section 6276.16, alphabetical listing of statutes; Letter E, add:

Equalization, State Board of, limitation on disclosure of personal information regarding appeals from actions of the Franchise Tax Board, Section 19545, Revenue and Taxation Code.
5. **Related legislation.** SB 280 (Campbell) proposes to add more specific restrictions to the release of taxpayers’ personal or financial information by enacting the Taxpayer Privacy Bill of Rights under the FTB’s laws.

## COST ESTIMATE

This bill would result in insignificant costs to the Board.

## REVENUE ESTIMATE

This bill would not impact the state’s revenues.

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